

United States District Court  
For the Northern District of California

10 KEN WALTERS and JOHN BONILLA, in  
11 their respective capacities as Trustees of  
12 the OPERATING ENGINEERS HEALTH  
13 AND WELFARE TRUST FUND FOR  
14 NORTHERN CALIFORNIA; BOARD OF  
15 TRUSTEES OF THE PENSION TRUST  
16 FUND FOR OPERATING ENGINEERS;  
17 BOARD OF TRUSTEES OF THE  
18 PENSIONED OPERATING ENGINEERS  
19 HEALTH AND WELFARE FUND;  
BOARD OF TRUSTEES OF THE  
OPERATING ENGINEERS AND  
PARTICIPATING EMPLOYERS PRE-  
APPRENTICESHIP, APPRENTICE AND  
JOURNEYMEN AFFIRMATIVE ACTION  
TRAINING FUND; BOARD OF  
TRUSTEES OF THE OPERATING  
ENGINEERS VACATION AND  
HOLIDAY PLAN,

NO. C 04-04993 FMS

**ORDER**

20 Plaintiffs,

21 v.

22 DIAMOND OAKS CONSTRUCTION  
23 COMPANY, INC., A California  
Corporation,

24 Defendant.

25 Pursuant to the Court's Order to Show Cause dated June 10, 2005, Plaintiffs have  
26 submitted a Response addressing the Court's questions posed in its June 10<sup>th</sup> Order.

27 Although Plaintiffs have adequately addressed the majority of questions, there is at least  
28 one outstanding issue. Plaintiffs should therefore be prepared to address the following issue,

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1 with supporting evidence, at the June 23<sup>rd</sup> hearing.

2 Plaintiffs have asserted that the defendant has failed to pay contributions of \$13,431.60  
3 between December 2000 and August 2004. Complaint at 3. The amount of contribution is  
4 assessed in terms of “each hour worked by employees performing work covered by the Master  
5 Agreement.” Plaintiffs’ Response to Order to Show Cause at 3. To support its request,  
6 Plaintiffs have submitted Exhibit B to Wayne McBride’s declaration. This exhibit, however, is  
7 a conclusory record that lists only the total amounts that the plaintiffs claim they are owed.

8 Plaintiffs acknowledge that the contributions calculated were based on the participants’  
9 hours of work, reported to the plaintiffs by the defendant. According to the Plaintiff’s  
10 Response, Diamond Oaks submitted a report listing the participants’ hours every month,  
11 presumably including the months of December 2000 through August 2004. Plaintiffs’  
12 Response to Order to Show Cause at 4.

13 As discussed in the Court’s Order to Show Cause, whether or not damages are awarded  
14 is discretionary. Thus, before an award will be issued, the plaintiffs must demonstrate that the  
15 amount of \$13,431.60 is appropriately based on the hours the participants worked. Plaintiffs  
16 can best demonstrate this by submitting the reports completed by the defendant, reviewing the  
17 participants’ monthly hours, and explaining how the calculation was completed based on the  
18 hours reported by Diamond Oaks. Thus, plaintiffs should be prepared to submit such evidence  
19 at the June 23<sup>rd</sup>, 2005 hearing.

20 **IT IS SO ORDERED**

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23 Dated: June 20, 2005

24 \_\_\_\_\_ /s/  
FERN M. SMITH  
United States District Judge

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